



10
Reply Brief 37/3
S. Zimmerman

**IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re The Application of

DAVID CARL and NATHAN GERSHON

Serial No. 09/716,045

Group Art Unit 3713

Filed: November 20, 2000

Examiner: Dmitry Suhol

For: FREE FALL AND GAME SIMULATOR

Supervisory Patent Examiner:
Derris H. Banks

REPLY TO EXAMINER'S ANSWER

Mail Stop: REPLY BRIEF - PATENTS
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

RECEIVED

AUG 07 2003

TECHNOLOGY CENTER R3700

Dear Sir:

This is in rebuttal to the Examiner's Answer mailed June 2, 2003.

PROLOGUE

The parties have argued the claims structure and their interpretation of it, and further rhetoric in that area is probably not productive. Applicants do, however, wish to point out that it is believed inappropriate for the Examiner to substitute his understanding of the engineering involved for that of Applicants, as a means of attempted obviation of the Claims.

THIS APPLICATION IS ALL ABOUT A NOVEL

FREE FALL SIMULATOR

Appended hereto is a claim chart of Claim 1. The essence of this application is a device in which *laminar flow* is created within the cylindrical wall which makes this chamber. The use of such air flow makes the chamber ideal for training purposes in that the intent is that there be minimal disturbance in the air supporting the flyer and, perhaps, his or her instructor, and accordingly, less tension and apprehension in the flyer to overcome as training progresses.

The device further benefits from an inner cylindrical chamber which is of such size that the air flow is controllable and that is a further asset to those of little or no experience.

ONE SKILLED IN THE ART IS THE CRITERIA

The Examiner, throughout, interprets, indeed, speculates, on what he perceives to be the consequences of the structure, ignoring, or apparently so, Applicants' stated goal of creating laminar flow. It is generally understood that in order for a disclosure to be adequate, it need only be comprehensible to one skilled in the art [*Zenith Laboratories, Inc. v. Eli Lilly and Co.*, 460 F. Supp. 812, 201 U.S.P.Q. (BNA) 324, 334 (D.N.J. 1978), *aff'd*, 630 F.2d 120, 207 U.S.P.Q. (BNA) 719 (3d Cir. 1980); *Application of Robins*, 57 C.C.P.A. 1321, 429 F.2d 452, 457, 166 U.S.P.Q. (BNA) 552, 556 (1970)]

While these comments are not intended to deprecate the Examiner's level of skill, indeed, his recitation demonstrates a good technical understanding, it is the contention of the Applicants that one skilled in the art, faced with the task of creating laminar flow, could do so with the tools provided by the application. The Examiner interprets the structure, not to find laminar flow in the art, but rather, to criticize Applicants' structure as, in the Examiner's personal view, incapable of creating such flow.

The underlying message here is that laminar flow in a contained cylindrical space, and as claimed by Applicants, does not appear to exist in any comparable device relied upon by the Examiner.

HINDSIGHT WOULD APPEAR TO BE A CLEAR FACTOR HERE

For reasons which are not fully understood, the Examiner seems to be hell bent on finding ways to interpret the art in a manner which would permit him to avoid allowing one or more of Applicants' claims. It is respectfully submitted, that the only way for this to be done is to exercise hindsight.

The apparent stridency with which this application was greeted by the Examiner permeates the two office actions which preceded this appeal.

While the Examiner provides an erudite analysis of those scientific factors which come into play in the creation of laminar flow, on page 4 of his Answer, he interposes his own views on the matter, as distinguished from the views

of the prior art, when he discusses the contemplated fan structure in the following terms:

“. . . The Examiner further points out that the appellants contemplated fan structure (as shown in figure 3) shows a side by side relationship of multiple fans *which would most certainly* create a series of turbulent eddies rather than laminar flow. . . .” (Emphasis ours)

On page 5 of the Answer, the Examiner quarrels with the claim language found in Claim 3 in which it is claimed that the camera is remotely positionable and recessed out of said column of air. The Examiner does not point to anything in the specification that would contradict that claim. Indeed, the requirement for laminar flow would seem to suggest, if not demand, that there be nothing in the airstream to disturb that limitation. While it is true that the camera 40 of Figure 1 rides on a track 42, that is a depiction, and, at least with respect to the air column created by the fans in the inner chamber, it is clearly outside the air stream. It will be noted that the size of the inner chamber may be varied, as described on page 7 of the specification, to accommodate lesser numbers of flyers. Notwithstanding what appears in Figure 1, the claim calls for the camera to be

“. . . remotely positionable and recessed out of said column of air . . .” (Claim 3)

Again referring to page 5 of the Answer, the Examiner quarrels with reference to the goals. Reference to those goals is found in Claim 8 where it is stated:

" . . . all existing goals being recessed within said wall
defining said chamber."

The Examiner does not dispute the language of the claim, but, rather, argues that the goals are not where the Applicants say they are. It is contemplated by the inventors that the inner curtain wall would be removed, and the goals, as illustrated, would be right where they belong. As has been emphasized repeatedly, the use of an inner chamber cuts down on the volume of air needed to support a flyer and, thus, the power required, making it ideal for training. The full chamber makes playing games very efficient. Again, however, the Examiner substitutes his view, regardless of the facts, in an effort to avoid the clear import of the claim.

In arguing the prior art, the Examiner apparently finds Kitchen to be dispositive, reading into Kitchen a variable column of air where neither Kitchen, nor others relied upon by the Examiner, teach it. Indeed, it would not be necessary to the success of the Kitchen device, whereas to Applicants', it is highly significant.

In a similar vein, without pointing to anything in particular, the Examiner finds the blue screen technology of Claim 4 obvious. Applicants do not

claim to have invented the technology. Rather they claim to add it to what is believed to be a novel structure as set forth in Claim 1, to further enhance the flyer's experience within the chamber.

Not surprisingly, the Examiner denies that he has used hindsight in developing his theory of the prior art. On the other hand, he does not point to teachings in the prior art which would anticipate Applicants' claims. Rather, he reads into them anticipatory language which simply is not present.

Beginning on page 10 of the Answer, the Examiner has an issue with the language in Claim 2 with respect to a variable column of air. Yet, beginning on page 7, line 13 of the specification, that subject is discussed in some considerable detail, including how it is accomplished by the use of a curtain wall of lesser diameter.

The Examiner also feigns confusion with the term "curtain wall", attributing to it one of several possible compositions, in the Examiner's case, fabric, when, in fact, the material is not defined. What is defined and what is important is that laminar flow is created within that wall. *The specific composition of the wall material is not at issue . . .* at least as far as the application is concerned.

IN SUMMARY

There is no question that the Examiner has provided a reasoned and well articulated argument. That is not to say, however, that it is based on a valid premise for rejecting the claims in this case. Rather than pointing out prior art, the Examiner has relied upon his education and experience to read into the prior art that which is not reasonably found therein to proclaim Applicants' effort as *obvious*. The standard for evidence of obviousness must be greater than the Examiner's educated guess. On the issue of indefiniteness, the Examiner creates confusion by unsupported surmise. At the risk of being redundant, it has been said that a disclosure, to be adequate, need only be comprehensible to those skilled in the art (*Zenith Labs*), and that it need not convince one skilled in the art that the assertions therein are correct (*Application of Robbins*).

It is believed that the Applicants have made a case for allowance of their remaining claims based on the facts and applicable law, and, for that reason, it is respectfully submitted that this appeal is well taken and that the Applicants are entitled to a patent.

Respectfully submitted,



Dennis B. Haase
Registration No. 22,037
(501) 374-2100
Fax: 374-4234
Attorney for Applicants

1. In a free fall simulator wherein a cylindrical primary wall is provided,

said primary wall defining a chamber,

means for generating a column of air under pressure in said chamber,

said column of air moving from bottom to top, the pressure being sufficient to support one or more flyers therein,

said primary wall having a surface,

said surface being contiguous with and defining the diameter of said column,

the surface of said primary wall being smooth such that said column of air moves in laminar flow in at least an upstream portion of said column of air.



CERTIFICATE OF MAILING

In Re The Application of

DAVID CARL and NATHAN GERSHON

Serial No. 09/716,045

Filed: November 20, 2000

For: FREE FALL AND GAME SIMULATOR

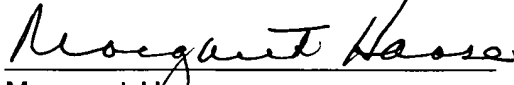
REPLY TO EXAMINER'S ANSWER

RECEIVED
AUG 07 2003
TECHNOLOGY CENTER R3700

I hereby certify that this Reply to Examiner's Answer is being
deposited with the United States Postal Service, first class mail, charges prepaid, in
an envelope addressed to:

Mail Stop: REPLY BRIEF - PATENTS
Commissioner of Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

on July 30, 2003.


Margaret Haase

Dated: July 30, 2003